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**OFFICE OF PETITIONS**

In re Application of :  
Ozawa, et al. : DECISION DISMISSING  
Application No. 10/658,872 : PETITION  
Filed: July 28, 2003 :  
Attorney Docket No. F-7936 :

This is a decision on the papers styled, "Petition Under 37 CFR 1.131 Requesting Correction Of The Filing Date," filed August 23, 2004, which has been treated as a petition under 37 CFR 1.10(c), requesting that the above-identified application be accorded a filing date of August 26, 2003, rather than the presently accorded filing date of July 28, 2003.

The petition is dismissed.

Petitioners allege that the application was deposited in USPS Express Mail service on August 26, 2003. In support, the petition is accompanied by a copy of a USPS "Track & Confirm" document that indicates the Express Mail package with Express Mail label no. EV322920525US (the same number found on the new application transmittal) was received by the USPTO on August 28, 2003. It is noted that the USPS "Track & Confirm" document does not indicate when the item was actually deposited in the USPS Express Mail service. Furthermore, it is noted that USPTO records indicate application file no. 10/658,872 was filed on July 28, 2003.

Paragraph (c) of 37 CFR 1.10 states that:

"Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Commissioner to accord the correspondence a filing date

as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and
- (3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit." (Emphasis supplied)

A grantable petition under 37 CFR 1.10(c) must include "a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit."

The petition filed August 23, 2004, is not accompanied by the required true copy of the "Express Mail" receipt. However, petitioner has submitted other official notation by the USPS in the form of the copy of the USPS "Track & Confirm" document. However, this document only shows the date of receipt of the item by the USPTO but fails to show the date of deposit, as required by 37 CFR 1.10(c)(3). As such, the filing date of August 26, 2003 cannot be found in the documentary evidence supplied by petitioner.

Accordingly, the petition filed August 23, 2004, does not contain the true copy of the "Express Mail" mailing label showing the "date-in" as required by the rule nor does it contain any other official notation by the USPS relied upon to show the date of deposit and as such must be dismissed. However, the dismissal is without prejudice to reconsideration if petitioner can provide the necessary "Express Mail" mailing label showing the "date-in" as required by the rule or any other official notation by the USPS relied upon to show the date of deposit of August 26, 2003.

It should be noted that based on the documentary evidence that has been submitted, petitioner may contend that the above-identified application was received by the USPTO on August 28,

2003. If petitioner wishes to pursue this later filing date, petitioner should do as such in any request for reconsideration that petitioner may wish to file.

The application is being returned to Technology Center 2800 with the presently accorded filing date of July 28, 2003.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition  
Commissioner for Patents  
Box 1450  
Alexandria, VA 22313

By FAX: (703) 872-9306  
Attn: Office of Petitions

By hand: Customer Service Window  
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Telephone inquiries should be directed to the undersigned at (703) 306-9200.



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